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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43117
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-CR-2011-1331
)	
DEYLEN SCOTT LOOS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Loos failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of his unified sentence of five years, with two years fixed, imposed upon his guilty plea to possession of a controlled substance with the intent to deliver?

Loos Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Loos pled guilty to possession of a controlled substance with the intent to deliver and the district court imposed a suspended unified sentence of five years, with two years fixed, and placed Loos on probation for five years. (41536 R., pp.43-48.¹)

Less than a year later, Loos's probation officer arrested him on an Agent's Warrant, and the State subsequently filed a motion for probation violation. (41536 R., pp.55-56, 67-69.) Loos admitted to violating some of the terms of his probation, and the district court revoked his probation, ordered Loos's underlying sentence executed, and retained jurisdiction for 365 days. (41536 R., pp.76-78.) After a period of retained jurisdiction, the district court suspended the balance of Loos's sentence and placed him on probation for five years. (41536 R., pp.81-86.)

Less than five months later, the State filed a new motion for probation violation. (41536 R., pp.87-91.) While this motion was still pending, Loos's probation officer arrested him on an Agent's Warrant for committing new crimes, and the State subsequently filed an amended motion for probation violation to include these allegations. (43156 R., pp.97-98, 106-23.) Loos admitted to violating some of the terms of his probation, and the district court revoked Loos's probation, ordered his underlying sentence executed, and retained jurisdiction for a second time. (41536 R., pp.131, 133-35.) Loos timely appealed from the district court's Order Revoking Probation. (41536 R., pp.136-38.)

¹ The Idaho Supreme Court entered an Order augmenting Loos's appeal in this matter with the record, exhibits, and transcripts in Loos's prior appeal, docket number 41536. (05/19/15 Order Augmenting Appeal.)

At the rider review hearing in March 2014, while Loos's appeal was still pending, the district court entered an order suspending Loos's sentence and placing him on probation for five years. (43117 R., pp.15-19.) The Idaho Court of Appeals subsequently dismissed Loos's appeal as moot. State v. Loos, 2014 Unpublished Opinion No. 708 (Idaho App., September 2, 2014).

Less than six months after Loos was granted yet another chance for community supervision, the state filed a motion for probation violation alleging Loos had again violated his probation. (43117 R., pp.20-35.) While this motion for probation violation was pending, Loos's probation officer arrested him on an Agent's Warrant for failing to stay at his reported address and using illegal drugs. (43117 R., pp.37-38.) The state subsequently filed an amended motion for probation violation, adding the allegations of methamphetamine and marijuana use. (43117 R., pp.47-53.) Loos admitted to violating some of the terms of his probation, and the district court revoked Loos's probation and ordered his underlying sentence executed without reduction. (43117 R., pp.59, 66-68.) Loos timely filed a Rule 35 motion for sentence reduction, which the district court denied. (43117 R., pp.61-65, 69-70.) Loos filed an appeal timely only from the district court's denial of his Rule 35 motion. (43117 R., pp.71-74, 76-81.)

"Mindful that he did not provide any new or additional information," Loos nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion because, he contends, the objectives of sentencing "may still be accomplished by reducing the sentence in this case," and because, he contends, "the district court failed to give proper weight and consideration to his substance abuse and desire for

treatment.” (Appellant's brief, pp. 3-4.) The record supports the district court's denial of Loos's Rule 35 motion.

In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion “does not function as an appeal of a sentence.” The Court noted that where a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, “[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Absent the presentation of new evidence, “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence.” Id. Accord State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008).

On appeal, Loos acknowledges that he provided no “new” information in support of his motion as required in State v. Huffman. (Appellant's brief, p.3.) Because Loos presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Loos's Rule 35 motion.

DATED this 29th day of October, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of October, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General